

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION**

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

**THIS DOCUMENT RELATES TO:**

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S  
CROSS MOTION TO AMEND MDL ORDER NO. 9**

The Plaintiffs' Steering Committee ("PSC") hereby opposes Premier Orthopedics Associates Surgical Center, LLC, Premier Orthopaedic and Sports Medicine Associates of South Jersey, LLC, d/b/a Premier Orthopaedic and Sports Medicine Associates, Kimberly Yvette Smith, M.D., a/k/a Kimberly Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., John Catalano, M.D., and Jeffrey Strauss, M.D.'s (collectively "Premier" or "Premier Defendants") Motion to Extend the Fact Discovery Deadline to December 15, 2015 [Dkt. 1852]. Additionally, the PSC moves this honorable Court to amend MDL Order No. 9 ("CMO 9").

On September 18, 2014, Chief Magistrate Judge Boal entered CMO 9, setting forth a timetable for discovery on common issues in this matter. Currently, discovery in many of the cases are on track to be concluded by the date set forth in CMO 9. However, despite the parties' best efforts, discovery in the following cases will not be completed by the mid-June deadline: Premier Defendants; Box Hill Surgery Center, LLC, Ritu T. Bhambhani, M.D., and Ritu T. Bhambhani, M.D., LLC (collectively "Box Hill" or "Box Hill Defendants"); and Clinic Related

Defendants with 5 or less cases currently pending against them in the MDL (“Small Clinic Defendants”).

The PSC has met and conferred with the Premier and Box Hill Defendants to determine the appropriate modification to the discovery schedules for those cases. Although all parties agree that the schedule deadlines enumerated in CMO 9 need to be extended, the parties have not agreed on the appropriate length of the extension.

The PSC’s proposal will allow the settling defendants and third parties to maintain the current deadline for completing discovery in compliance with CMO 9; allow the bellwether trials against St. Thomas Defendants<sup>1</sup> and Specialty Surgery<sup>2</sup> defendants to proceed on schedule; and set reasonable, phased discovery schedules for Premier and Box Hill Defendants, culminating in a Premier trial in the Spring or Summer of 2016 and a Box Hill trial in Fall of 2016. It would also stay the discovery and briefing deadlines of cases pending against the Small Clinic Defendants until December 31, 2015 (as described in the memorandum and proposed order filed herewith).

The PSC proposes that the following pretrial schedules apply, respectively, to the Premier Defendants and Box Hill Defendants:

<b>Date</b>	<b>Premier Defendants</b>	<b>Box Hill Defendants</b>
06/15/2015	<i>All Defs:</i> Close of Common Fact Discovery as to settling defendants	<i>All Defs:</i> Close of Common Fact Discovery as to settling defendants

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<sup>1</sup> Saint Thomas Outpatient Nerosurgical Center, Dr. John Culclasure, Debra Schamberg, R.N., Saint Thomas Health, Saint Thomas Network, and Saint Thomas Hospital West f/k/a Saint Thomas Hospital (collectively “St. Thomas Defendants”).

<sup>2</sup> Specialty Surgery Center, PLLC and Dr. Kenneth R. Lister (collectively “Specialty Surgery”).

Date	Premier Defendants	Box Hill Defendants
11/15/2015	<i>Premier:</i> Close of common fact discovery; meet and confer on potential bellwether process	
1/15/2016	<i>Premier:</i> Close of case specific bellwether case discovery	
1/22/2016		<i>Box Hill:</i> Close of common issue and case specific fact discovery
1/31/2016	<i>Premier:</i> Initial expert disclosures and proffer of deposition	
2/22/2016		<i>Box Hill:</i> initial expert disclosures and proffer of deposition dates
3/23/2016		<i>Box Hill:</i> rebuttal expert disclosures and proffer of deposition dates
4/4/2016	<i>Premier:</i> Rebuttal expert disclosures and proffer of deposition dates	
4/23/2016	<i>Premier:</i> Deadline for expert depositions	
5/21/2016	<i>Premier:</i> Dispositive motions and Daubert motions filed	
5/23/2016		<i>Box Hill:</i> Deadline for expert depositions
6/5/2016	<i>Premier:</i> Oppositions to dispositive motions and Daubert motions	
6/19/2016	<i>Premier:</i> Replies in support of dispositive motions and Daubert motions	

<b>Date</b>	<b>Premier Defendants</b>	<b>Box Hill Defendants</b>
6/22/2016		<i>Box Hill:</i> Dispositive motions and Daubert motions filed
To be set by separate order	<i>Premier:</i> Hearing on dispositive motions and Daubert motions	
7/7/2016		<i>Box Hill:</i> Oppositions to dispositive motions and Daubert motions filed
7/22/2016		<i>Box Hill:</i> Replies in Support of Dispositive Motions and Daubert Motions
7/25/2016	<i>Premier:</i> Final pretrial hearing	
8/1/2016	<i>Premier:</i> Trial (or trial ready)	
To be set by separate order		<i>Box Hill:</i> Hearing on dispositive motions and Daubert motions
9/7/2016		<i>Box Hill:</i> Final pretrial hearing
10/3/2016		<i>Box Hill:</i> Trial (or trial ready)

The PSC respectfully moves the Court to amend MDL Order 9 by (i) as to the Premier and Box Hill related defendants, extending the deadlines to complete common discovery and establishing proposed pretrial schedules in accordance with the PSC's proposed pretrial schedule (above), and (ii) temporarily staying the deadlines for completing common discovery against those clinic and doctor defendants with five or fewer filed actions currently pending against them in the MDL (but not the deadline for completing discovery from the settling defendants).

Dated: May 18, 2015

Respectfully submitted,

**/s/ Thomas M. Sobol**

Thomas M. Sobol  
Kristen A. Johnson  
HAGENS BERMAN SOBOL SHAPIRO LLP  
55 Cambridge Parkway, Suite 301  
Cambridge, MA 02142  
Telephone: (617) 482-3700  
Facsimile: (617) 482-3003  
tom@hbsslaw.com  
kristenj@hbsslaw.com

*Plaintiffs' Lead Counsel*

Elizabeth J. Cabraser  
Mark P. Chalos  
Annika K. Martin  
LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
150 Fourth Avenue, North, Suite 1650  
Nashville, TN 37219  
Telephone: (615) 313-9000  
Facsimile: (615) 313-9965  
ecabraser@lchb.com  
mchalos@lchb.com  
akmartin@lchb.com

Marc E. Lipton  
LIPTON LAW  
18930 W. 10 Mile Road  
Southfield, MI 48075  
Telephone: (248) 557-1688  
Facsimile: (248) 557-6344  
marc@liptonlawcenter.com

Kimberly A. Dougherty  
JANET, JENNER & SUGGS, LLC  
31 St. James Ave., Suite 365  
Boston, MA 02116  
Telephone: (617) 933-1265  
kdougherty@myadvocates.com

Patrick T. Fennell  
CRANDALL & KATT  
366 Elm Avenue, S.W.

Roanoke, VA 24016  
Telephone: (540) 342-2000  
[pfennel@crandalllaw.com](mailto:pfennel@crandalllaw.com)

Mark Zamora  
ZAMORA FIRM  
6 Concourse Way, 22nd Floor  
Atlanta, GA 30328  
Telephone: (404) 451-7781  
Facsimile: (404) 506-9223  
[mark@markzamora.com](mailto:mark@markzamora.com)

J. Gerard Stranch, IV  
Benjamin A. Gastel  
BRANSETTER, STRANCH & JENNINGS  
PLLC  
227 Second Avenue North  
Nashville, TN 37201  
Telephone: (615) 254-8801  
Facsimile: (615) 255-5419  
[gerards@branstetterlaw.com](mailto:gerards@branstetterlaw.com)  
[beng@branstetterlaw.com](mailto:beng@branstetterlaw.com)

*Plaintiffs' Steering Committee*

**CERTIFICATE OF SERVICE**

I, Thomas M. Sobol, hereby certify that I caused a copy of the above to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: May 18, 2015

**/s/ Thomas M. Sobol**  
Thomas M. Sobol